

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATHAN POOLE,)	
)	
Plaintiff,)	
)	
v.)	No. 07 C 2641
)	
CHARLEY J. OSBORN, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Two of the defendants in this personal injury action brought under the auspices of diversity of citizenship--Charley Osborn and Osborn & Son Trucking Company, Inc. (collectively "Osborns")--have filed their Answer and an affirmative defense ("AD") to the Complaint brought against them and their codefendants by Nathan Poole ("Poole"). This memorandum order is issued sua sponte to require Osborns' counsel to cure some flaws in that responsive pleading.

To begin with, Jurisdiction ¶¶4 through 6 are at odds with the disclaimer requirements of the second sentence of Fed. R. Civ. P. ("Rule") 8(b)--see App. ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). Those paragraphs are stricken, but with leave granted to replead in proper form.

Next, Osborns' counsel impermissibly challenges Count I ¶3 and Count II ¶3 as "a matter of law and not a pleading"--see App. ¶2 to State Farm. Those paragraphs are also stricken, again with

leave granted to replead.

Finally, AD ¶3, to the extent that it asserts that Poole was the sole cause of his alleged injuries, contradicts Poole's allegations and is therefore flawed in Rule 8(c) terms--see App. ¶5 to State Farm. That portion of Osborns' assertion is stricken, this time without leave to replead.

Osborns' counsel are granted until June 25, 2007 to file the appropriate amendments to the stricken paragraphs, failing which the corresponding allegations of Poole's Complaint will be deemed to have been admitted. No charge is to be made to Osborns by their counsel for the added work and expense incurred in correcting counsel's errors. Osborns' counsel are ordered to apprise their clients to that effect by letter, with a copy to be transmitted to this Court's chambers as an informational matter (not for filing).



Milton I. Shadur
Senior United States District Judge

Date: June 15, 2007